

Code of
Fairfax County

ZONING
ORDINANCE

With amendments through July 1, 2002

ARTICLE I

THE CONSTITUTION OF THE ORDINANCE

PART I 1-100 TITLE

The regulations embraced in this and the following nineteen (19) Articles constitute Chapter 1 12 of the 1976 Code of the County of Fairfax, Virginia, which shall be designated 'The Zoning Ordinance of Fairfax County, Virginia,' and may be so cited.

PART 2 1-200 PURPOSE AND INTENT

The Zoning Ordinance of Fairfax County, Virginia, is intended to promote the health, safety and general welfare of the public and to implement the adopted comprehensive plan for the orderly and controlled development of the County. To accomplish these ends, the Zoning Ordinance is designed to give reasonable consideration to each of the following purposes, where applicable:

1. to create and maintain conditions under which people and their environment can exist in a productive and enjoyable harmony while fulfilling the social, economic and other requirements of present and future generations;
2. to facilitate the creation of a convenient, attractive and harmonious community, to provide for adequate light, air, convenience of access and safety from fire, flood, crime and other dangers; and to reduce or prevent congestion in the public streets;
3. to provide for County growth that is consonant with the efficient and economic use of public funds and environmental quality;
4. to recognize the needs of agriculture, housing, industry and business in the County's future growth;
5. to promote the creation and expansion of land uses that will be developed with adequate highway, utility, health, education and recreational facilities;
6. to provide residential areas with healthy surroundings for family life;
7. to protect against destruction of or encroachment upon historic areas;
8. to encourage economic development activities that provide desirable employment and a broad tax base;
9. to promote the conservation of natural resources,
10. to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forestation, scenic vistas, and other similar areas and to ensure that development in such areas is well controlled;
11. to protect against the following: overcrowding of land; undue intensity of noise; air and water pollution; undue density of population in relation to community facilities existing or available; obstruction of light and air; danger and congestion in travel and transportation; and loss of life, health, or property from fire, flood, panic or other dangers;

12. to promote the creation and preservation of housing of such type, size and cost suitable for meeting the current and future needs of the County as well as a reasonable proportion of the current and future needs of the planning district in the form of safe, sanitary dwelling units;
13. to encourage innovative and desirable approaches to designed development; and to promote the distinctive sense of urban, suburban and exurban places as well as the sense of community within the County;
14. to protect, not inconsistent with State water quality standards, surface water and ground water as defined by Sect. 62.1-255 of the Code of Virginia;
15. to accomplish all other objectives and exercise all other powers set forth in Article 7, Chapter 22, Title 15.2 of the Code of Virginia.

PART 3 1-300 SEVERABILITY

Should any Section or any provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part so held to be unconstitutional or invalid.

PART 4 1-400 CONFLICTING ORDINANCES

Whenever any provision of this Ordinance imposes a greater requirement or a higher standard than is required in any State or Federal statute or other County ordinance or regulation, the provision of this Ordinance shall govern. Whenever any provision of any State or Federal statute or other County ordinance or regulation imposes a greater requirement or a higher standard than is required by this Ordinance, the provision of such State or Federal statute or other County ordinance or regulation shall govern. In the event a specific provision of this Ordinance precludes the provision of an accessibility improvement, the accessibility improvement shall be allowed regardless of the specific provision of this Ordinance which would otherwise preclude it.

The text of this Zoning Ordinance shall apply to any parcel covered by a previous grant of zoning with proffered conditions pursuant to Sect. 15.2-2303 of Va. Code Ann. except where the imposition of the requirements of this Ordinance would be in conflict with a specific proffered condition which would supersede the requirements of this Ordinance pursuant to the 1977 amendment to Sect. 15.2-2303 of Va. Code Ann. Provided, however, when a specific proffered condition precludes the provision of an accessibility improvement, such improvement shall be allowed regardless of the specific proffered condition which would otherwise preclude it.

PART 5 1-500 MINIMUM REQUIREMENTS

In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not the intent of this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this Ordinance imposes a greater restriction upon the use and dimensions of buildings or premises, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this Ordinance shall govern, except where expressly qualified by this Ordinance.

PART 6

1-600 EFFECTIVE DATE

The Zoning Ordinance of Fairfax County, Virginia, as herein presented, was adopted on June 12, 1978 and became effective at 12:01 AM on August 14, 1978, at which time the Zoning Ordinance of the County of Fairfax, Virginia, adopted July 22, 1959, and recodified May 19, 1965, as amended, was repealed. Upon its effective date, this Ordinance became Chapter 12 of the 1976 Code of the County of Fairfax, Virginia. Unless otherwise qualified herein, the term effective date when used in this Ordinance shall be deemed to be August 14, 1978 or the effective date of an applicable amendment thereto.

PART 7

1-700 COPY ON FILE

A certified copy of the Zoning Ordinance of Fairfax County, Virginia, as may be amended from time to time, shall be filed in the Office of the Zoning Administrator of Fairfax County and in the Office of the Clerk to the Board of Supervisors.

GENERAL REGULATIONS

PART 7

2-700 COMMON OPEN SPACE AND COMMON IMPROVEMENT REGULATIONS

2-701 Applicability

The regulations set forth in this Part shall apply to the following features in all residential developments where such features are proposed to be dedicated or conveyed for public use or are to be held in common ownership by the persons residing in the development:

1. All lands in common open space, not a part of individual lots, designed for the mutual benefit of a group of persons residing in the development, where such lands are not to be dedicated or conveyed for public use, whether or not such lands are required by the provisions of this Ordinance, and
2. All private streets, driveways, parking bays, uses, facilities, and buildings or portions thereof, as may be provided for the common use, benefit and/or enjoyment of the occupants of the development, whether or not such improvements are required by the provisions of this Ordinance.
3. Where a condominium development is proposed, such shall be established and regulated in strict accordance with the provisions of the Condominium Laws of Virginia.
4. All lands to be deeded or conveyed for public use.

2-702 General Requirements

All lands and improvements set forth in Par. 1, 2, and 3 of Sect. 701 above shall be established and maintained in accordance with the following requirements:

1. The applicant or developer shall provide for and establish a nonprofit organization or other legal entity under the laws of Virginia for the ownership, care and maintenance of all such lands and improvements.

2. Such organization shall be created by covenants and restrictions running with the land and shall be composed of all persons having ownership within the development. Such organization shall be responsible for the perpetuation, maintenance, and function of all common lands, uses and facilities.
3. All lands and improvements shall be described and identified as to location, size, use and control in a restrictive covenant, and such covenant shall set forth the method of assessment for the maintenance of such land. These restrictive covenants shall be written so as to run with the land and be in full force and effect for a period of not less than twenty (20) years, and shall be automatically extended for successive periods of twenty (20) years unless terminated in a manner set forth hereinafter. These covenants shall become part of the deed to each lot or parcel within the development.
4. Such restrictive covenant and organization shall continue in effect so as to control the availability of the facilities and land thereby provided, to maintain the land and facilities for their intended function, and to protect the development from additional and unplanned densities of use. Such organization shall not be dissolved nor shall such organization dispose of any common open space, by sale or otherwise, except to an organization conceived and organized to own and maintain the common open space, without first offering to dedicate the same to the County or other appropriate governmental agency.
5. No lands in common open space shall be denuded, defaced or otherwise disturbed in any manner at any time without the approval of the Director. However, routine maintenance of common open space limited to the removal of dead, diseased, dying or hazardous trees or shrubbery; removal and replacement of dead landscaping and screening materials; installation of supplemental plantings; removal of noxious vegetation such as poison ivy or greenbrier, lawn care and maintenance; or repair and replacement of picnic and play equipment; or similar routine maintenance shall be permitted without approval of the Director-, provided such maintenance is allowed under any applicable proffered conditions, applicable conditions of special permits or special exceptions or other applicable laws and ordinances and further provided that such common open space does not contain areas used to comply with Best Management Practices such as floodplains and conservation easements.
6. If the Director shall determine that the public interest requires assurance as to adequate maintenance of common open space areas and improvements, the Director may require that the covenants creating such organization shall provide that in the event the organization established to own and maintain such common open space/improvements, or any successor organization, shall at any time after establishment of the development fail to maintain the common open space/improvements in reasonable order and condition in accordance with the approved plans, the County may serve notice in writing upon such organization or upon the residents of the development setting forth the manner in which the organization has failed to maintain the common open space improvements in reasonable condition, and said notice shall contain a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the date and place of a public hearing thereon which shall be held within twenty (20) days of the notice.
7. At such hearing the County may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.
8. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within said thirty (30) days or any extension thereof, the County, in order to preserve the taxable values of the properties within the development and to prevent the common open space improvements from becoming a public nuisance, may enter upon said common open space and maintain the same for one (1) year.

9. Said entry and maintenance shall not vest in the public any rights to use the common open Space improvements except when the same is voluntarily dedicated to the public by the owners.
10. Before the expiration of said one (1) year period, the County shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space improvements, call a public hearing upon notice in writing to such organization or to the residents of such development, to be held by the Board, at which hearing the organization shall show cause why such maintenance by the County shall not, at the election of the Board, continue for a succeeding one (1) year period.
11. If the Board shall determine that such organization is ready and able to maintain the common open space improvements in reasonable condition, the County shall cease to maintain the common open space/improvements at the end of said one (1) year period.
12. If the Board shall determine that such organization is not ready and able to maintain the common open space/improvements in a reasonable condition, the County may, in its discretion, continue to maintain the common open space/improvements during the next succeeding year, and subject to a similar hearing and determination in each year thereafter.
13. The covenants creating such organization shall further provide that the cost of such maintenance by the County shall be assessed ratably against the properties within the development that have a right of enjoyment of the common open space improvements, and shall become a charge on said properties, and such charge shall be paid by the owners of said properties within thirty (30) days after receipt of a statement therefor.
14. Notwithstanding the above provisions of this Part, an adjacent development may join the organization for purposes of utilizing the open space and improvements thereon pursuant to Sect. 16404.

2-703 Submission Requirements

1. Prior to the dedication or conveyance of those features described in Sections 701 and 702 above, the following documents shall be submitted to and approved by the County:
 - A. The articles of incorporation or other organizational documentation for the nonprofit organization.
 - B. The bylaws of the nonprofit organization.
 - C. The covenants or restrictions related to the use of common property, including the system and amounts of assessments for perpetuation and maintenance.
 - D. A fiscal program for a minimum of ten (10) years, including adequate reserve funds for the maintenance and care of all lands, streets, facilities, and uses under the purview of the nonprofit organization.
 - E. A document granting the right of entry upon such common property to the County law enforcement officers, rescue squad personnel, and the fire fighting personnel while in the pursuit of their duties; and, in the case of private streets and common driveways, permitting the enforcement of cleared emergency vehicle access.
 - F. A complete listing of all land, buildings, equipment, facilities, and other holdings of the nonprofit organization, as such is proposed, and a complete description of each.

- G. A recommended time schedule for the maintenance of major facilities, including streets, street signs, pools, sidewalks, parking areas and buildings.
 - H. A copy of the proposed notice that will be given to prospective buyers regarding the organization, assessments and fiscal program.
 - I. A copy of the Deed of Conveyance and a Title Certificate or, at the discretion of the Director, a commitment for a policy of title insurance issued by an insurance company authorized to do business in the Commonwealth of Virginia, assuring unencumbered title for all lands proposed to be conveyed to the County, other appropriate governmental agency, or other organization, including the nonprofit organization.
2. The documents set forth in Par. I shall be reviewed and approved by the Director and the County Attorney, and such approval shall be obtained before any final plat is recorded or final site plan is approved. Such documents, once approved, shall become part of the recorded subdivision plat or approved site plan.

2-704 (Deleted by Amendment #97-296, Adopted and Effective April 7,1997)

2-705 County Not Responsible for Maintenance

Except as provided for in Par. 8 of Sect. 702 above, the County shall not be responsible for the maintenance of any of the common open space and common improvements required by this Ordinance. Where the County becomes the owner of such open space and improvements, under the provisions of Par. 4 of Sect. 702 above, there shall accrue to the County or other appropriate governmental agency no responsibility except to the general public of the entire County.

PART 3

2-300 INTERPRETATION OF DISTRICT REGULATIONS

The Sections that follow present a brief statement of interpretation of the district regulations set forth in Articles 3-7.

2-309 Open Space

The open space requirements presented for a given zoning district shall be considered as a minimum, and such open space shall be located on the same lot as the primary use or structure, except as specifically provided otherwise in this Ordinance. Open space requirements shall, generally, be presented as an expressed percent of the gross area of the lot. No part of the open space in any development shall be subsequently reduced below the minimum requirements of this Ordinance, nor be utilized in any manner contrary to the provisions of this Ordinance, except as specifically provided otherwise in this Ordinance. Open space shall not be denuded, defaced nor otherwise disturbed in any manner at any time without the approval of the Director.

The computation of open space areas shall be based on the following rules:

- 1. In cases where the balance of land not contained in lots and streets is needed by the County for parks, recreational areas, or stream valleys, and such land is suitable in location, size, shape, condition and topography for such needed purposes as determined by the Director, then such land shall be deeded to the County for such purpose. Such land shall be referred to as dedicated open space, and shall be given full credit in satisfying the open space requirement for a given district.

2. In cases where a given area within a lot is needed by the County for a school site, then fifty (50) percent of such area shall be given credit for satisfying the open space requirement of the district in which located.
3. In cases where the balance of land riot contained in lots and streets is not needed by the County for such purposes as set forth in Par. I and 2 above, then the Director may approve such lands to be conveyed to a nonprofit organization as provided for in Part 7. Such land shall be referred to as common open space, and shall be given full credit in satisfying the open space requirement for a given district.
4. In subdivisions approved for cluster development, there shall be provided at least one area of open space comprised of lands outside of the floodplain, which is one (1) acre in size and has no dimension less than fifty (50) feet. Deviations from this provision may be permitted with Board of Supervisors' approval of a Category 6 special exception for waiver of open space requirements or appropriate proffered conditions, if it finds that such deviation will further the intent of the Ordinance, the adopted comprehensive plan and other adopted policies. In subdivisions approved for cluster development wherein the required open space will approximate five (5) acres in area, generally such open space shall be so located and shall have such dimension and topography as to be usable open space.
5. Fifty (50) percent of the area which lies within a major utility easement or right-of-way may be calculated as open space, but only if the remaining rights of the easement or right-of-way are dedicated for recreational or open space use. In no instance, however, shall lands which lie within a major utility easement or right-of-way represent more than thirty (30) percent of the total land area needed to satisfy the open space requirement for a given district. For the purpose of this Paragraph, a major utility easement or right-of-way shall be one having a width of twenty-five (25) feet or more which is located entirely outside a street right-of-way.
6. In no instance shall open space credit be given for lands which are included in or reserved for the right-of-way of any street, or for any mass transit facility, or for any public facility except as qualified in the Paragraphs above.
7. In the administration of these provisions, the Director shall have the authority to determine whether lands do qualify as open space and the authority to determine whether such lands are common open space, dedicated open space, landscaped open space or recreational open space.
8. The Board may waive the open space requirement presented for a given zoning district in accordance with the provisions of Sect. 9-612.